


EXECUTIVE SECRETARIAT
ROUTING SLIP

TO:

		ACTION	INFO	DATE	INITIAL
1	DCI		X		
2	DDCI		X		
3	EXDIR		X		
4	D/ICS		X		
5	DDI		X		
6	DDA		X		
7	DDO		X		
8	DDS&T		X		
9	Chm/NIC				
10	GC		X		
11	IG		X		
12	Compt				
13	D/Pers				
14	D/OLL		X		
15	D/PAO		X		
16	SA/IA				
17	AO/DCI				
18	C/IPD/OIS		X		
19	Council/DDO		X		
20	ES		X		
21	Ch. History Staff	X			
22					
		SUSPENSE _____ Date			

Remarks


 Executive Secretary
 19 Oct 84
 Date

3637 (10-81)



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

84. 9332/6

OCT 10 1984

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 5164 - Central Intelligence Agency
Information Act
Sponsors - Rep. Mazzoli (D) Kentucky and 3 others

Last Day for Action

October 15, 1984 - Monday

Purpose

To authorize the Director of the Central Intelligence Agency to exempt certain files from disclosure under the Freedom of Information Act.

Agency Recommendations

Office of Management and Budget

Approval

Central Intelligence Agency

Approval (Signing
statement attached)

Department of Justice

Approval

Department of Defense

Approval (Informal)

National Security Council

Approval

Department of State

No objection

General Services Administration

No objection

Department of the Treasury

No comment

Discussion

The Freedom of Information Act (FOIA) requires the Central Intelligence Agency to search and review every file which might contain information responsive to an FOIA request. Searching files containing sensitive national security information that is almost always exempted from disclosure has proven to be particularly burdensome because of the extensive expenditure of time and effort by senior intelligence personnel who strive to identify non-sensitive material that may be released, but whose work results in virtually no benefit to the public. In addition, the courts have consistently ruled in favor of the CIA in challenges to its withholding of information.

H.R. 5164, as the CIA notes in its enrolled bill views letter, represents the culmination of several years of effort by the Administration to achieve relief for the CIA from unwarranted burdens imposed by the FOIA. The major provisions of the enrolled bill are summarized below.

F-100

Major Provisions of H.R. 5164

The major provisions of H.R. 5164 concern "operational files" of the CIA, which include material concerning intelligence sources and collection methods. The provisions would:

- Permit the Director of the CIA to exempt certain types of "operational files", as defined in H.R. 5164, from the search, review and disclosure requirements of the FOIA. Notwithstanding this exemption, the CIA must continue to search the "operational files" in response to a request (1) from United States citizens or permanent resident aliens seeking information about themselves pursuant to the FOIA or the Privacy Act; (2) concerning any special activity the existence of which is not exempt from disclosure under FOIA; and (3) concerning the specific subject matter of an investigation by the intelligence committees of Congress or by specified Executive branch agencies for any violation of law or Executive order or for any impropriety in the conduct of an intelligence activity;
- Provide for de novo judicial review of allegations that the CIA has improperly withheld records. The legislation contains detailed provisions specifying the procedural rules governing such litigation;
- Require the Director of the CIA to review at least once every ten years the exemptions in force to determine whether the exemptions can be removed from any category of exempted files or any portion thereof. The bill further contains various criteria which must be considered when conducting the decennial review, and permits an individual to bring suit on grounds that the CIA has improperly withheld records because of a failure to (1) comply with the requirement for a review or (2) consider the specified criteria when conducting the required review;
- Require the Director of the CIA, in consultation with the Archivist of the United States, the Librarian of Congress, and historians selected by the Archivist, to report to specified congressional committees by June 1, 1985, on the feasibility of conducting a systematic review for declassification and release of CIA information of historical value. The Director is also required to submit a report to the committees detailing various factual information about the Agency's processing of FOIA requests. This report is required to be submitted four times, once each six months beginning six months after enactment of the bill; and
- Amend the Privacy Act, in a way that would affect all government agencies, to prohibit any agency from using a Privacy Act exemption to deny access to records requested

under the FOIA. (This provision, which is unrelated to the general purpose of H.R. 5164, overturns the position taken by the Justice Department before the Supreme Court, and in effect clarifies that the two statutes represent independent means by which an individual may seek access to records containing information.)

H.R. 5164 further provides that the operational file exemptions and related provisions will apply to civil actions not commenced prior to February 7, 1984, and to any request for records, regardless of when the request was made.

Agency Views

As previously noted, H.R. 5164 fulfills a major objective of the CIA by relieving the Agency of the burdensome requirement to search files containing information that because of national security concerns is extremely unlikely to be released in response to an FOIA request. However, in order to obtain enactment of this legislation, the Administration did not object to the legislative package as a whole, notwithstanding an objectionable amendment to the Privacy Act.

The amendment, of serious concern to the Department of Justice, as well as OMB, would provide that the exemptions to access contained in the Privacy Act could not be used as a basis for withholding records that would otherwise be accessible to requesters under FOIA. Justice believes that the amendment would be harmful to law enforcement efforts because it may permit individuals in some circumstances to attempt to circumvent the Privacy Act's systematic exemption for criminal law enforcement records. A September 24, 1984 letter from the Attorney General to Senator Goldwater, which is attached to Justice's enrolled bill views letter, details the Department's views on this issue. That letter concludes by indicating support for H.R. 5164 solely because of its importance to the CIA, and consistent with that position, the Department recommends approval of the bill.

The CIA has prepared a signing statement (attached to its views letter) for your consideration; we understand, however, that the National Security Council is preparing a signing statement for your consideration in lieu of the CIA-proposed statement.

H.R. 5164 passed the House by a vote of 369 to 36, and the Senate by voice vote.

(signed) David A. Stockman

David A. Stockman
Director

Enclosures

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18	C/IPD/OIS		X		
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SUSPENSE _____
Date

Remarks

 Executive Secretary
12 Oct 84
 Date

STAT

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U.S. HOUSE OF REPRESENTATIVES

PERMANENT SELECT COMMITTEE
ON INTELLIGENCE

WASHINGTON, D.C. 20515

Executive Registry

84 - 9332/4

October 9, 1984

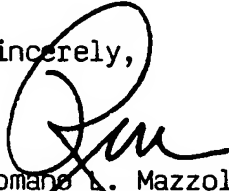
Honorable John N. McMahon
Deputy Director of Central Intelligence
Washington, D.C. 20505

Dear John:

I appreciate your kind note of October 2 concerning the CIA Information Act. The opportunity to have a hand in enacting a piece of legislation which truly is in the national interest is one of the more satisfying rewards of being a Member of Congress.

We can now look forward to implementing the new statute so as to insure that its purposes, including that of improving service to FOIA requesters, are swiftly accomplished.

Sincerely,


Romano L. Mazzoli
Chairman, Subcommittee
on Legislation

DCI
EXEC
REG

F-100

The Deputy Director of Central Intelligence

Washington, D.C. 20505

Executive Registry

84 - 9332

2 October 1984

ERS4-9332+1-3

The Honorable Barry M. Goldwater
Chairman
Select Committee on Intelligence
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:


The Central Intelligence Agency and its sources are indebted to you and your Committee for obtaining us the relief we sought from the Freedom of Information Act as it pertains to our operational files. The passage of this bill is explicit testimony that the Congress and Executive Branch of the United States are dedicated to the protection of our sources and methods. For that we are very grateful.

With warm regards and best wishes.

Sincerely,


John N. McMahon
Distribution by ES/ER

Origs - Each Addressee

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- 2 - DDCI
- 1 - EXDIR
- 1 - D/OLL
- 1 - DDO 
- 1 - DDA
- 1 - C/IPD/OIS
- 1 - OGC
- ① - ER File

STAT



The Deputy Director of Central Intelligence

Washington, D.C. 20505

Executive Registry

84 - 9332/1

2 October 1984

The Honorable Edward P. Boland
Chairman
Permanent Select Committee on Intelligence
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Central Intelligence Agency and its sources are indebted to you and your Committee for obtaining us the relief we sought from the Freedom of Information Act as it pertains to our operational files. The passage of this bill is explicit testimony that the Congress and Executive Branch of the United States are dedicated to the protection of our sources and methods. For that we are very grateful.

With warm regards and best wishes.

Sincerely,

John N. McMahon

STAT

STAT

The Deputy Director of Central Intelligence

Washington, D.C. 20505

Executive Registry

84 - 9332/2

2 October 1984

The Honorable Glenn English
House of Representatives
Washington, D.C. 20515

Dear Congressman:

As I mentioned on the phone today, we are very grateful for your support in obtaining the relief we sought from the Freedom of Information Act. We appreciate your concern on the files. We would be delighted to host you for lunch and let you examine how the system is working so you can have a hands-on appreciation that we are indeed following the letter as well as the spirit of the law and the intent of Congress.

STAT Please call [redacted] whenever you have the opportunity to visit us.

Sincerely,

STAT [redacted]
[redacted] John N. McMahon

STAT

The Deputy Director of Central Intelligence

Washington, D.C. 20505

Executive Registry

84 - 9332/3

2 October 1984

The Honorable Romano L. Mazzoli
House of Representatives
Washington, D.C. 20515

Dear Congressman:

The Central Intelligence Agency and its sources are very grateful for the personal effort you have expended in obtaining successful passage of the bill exempting our operational files from the Freedom of Information Act. Many of our colleagues and collaborators around the world, I am sure, are also grateful for your dedication to this cause.

With best wishes and warm regards.

Sincerely,

N. McMahon

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